

REMARKS/ARGUMENTS

Claims 4, 8-15 and 18-24 are pending in the application. Reconsideration is requested in view of the above amendments and the following remarks. New claims 22, 23 and 24 have been added to more particularly articulate the Applicant's invention.

Applicant notes the Examiner's Notice of Non-Compliant Amendment, and submits that the claims should have included the amendments made by the January 23, 2006 amendment. Applicant has conformed the claims so that the amendments are relative to the claims (as amended) of the January 23, 2006 amendments. Applicant has also noted in the remarks below, the reference to the claim language in the claims listing above.

Claims 4, 8-15 and 18-21 stand rejected under 35 U.S.C. 103(a) as being anticipated by US Patent 6,151,708 ("Pedrizetti") in view of US 6,493,871 ("McGuire") and in view of US 6,006,034 ("Heath"). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

The Cited Combination of References Fails to Disclose or Suggest the Applicant's Invention.

The Applicant's invention is not disclosed or suggested by the cited references and should be patentable. The Examiner contends that a cited passage in McGuire discloses a cryptographic hash of data information that uniquely identifies and

distinguishes different variations of a file (referring to and citing McGuire (US 6,493,871 – col. 9, line 9 – col. 10, line 37)).

The Examiner contends that it would have been obvious to one looking at Pedrizetti to combine McGuire in order to arrive at the Applicant's present invention. The Examiner admits that Pedrizetti is deficient of (1) a disclosure of the first and second hashes being cryptographic hashes and (2) a disclosure that the first cryptographic hash is comprised of a unique data identifier. The Examiner attempts to fill this deficiency with McGuire.

The Examiner has argued that Applicant's previous attempted distinction, namely that the second cryptographic hash of Applicant's invention is installed on the target, (e.g., preexists on the target or client), even if considered to mean that it is never transmitted from the server to the client, is deemed to be disclosed by Heath.

The Examiner considers that Heath teaches a cryptographic hash which is stored at or installed on the target. Contrary to the Examiner's position, one of ordinary skill in the art would not look to combine Heath with the other references. Heath discloses that the "encryption is used later to verify authenticity and integrity of the component following the completion of a download in the client." (See US 6,006,034, col. 5 lines 1-11, and col. 5 lines 60-67.above.) The goal of the Applicant's present invention is to expedite the processing so that an update, if required, is facilitated. The Examiner's application of Heath's supposed teachings does not arrive at the present invention. First, Applicant discloses and claims an apparatus and method for transmitting data to a target.

The Applicant's invention is carried out in order to determine if data should be transmitted to the target.

In considering the text of Applicant's claim, the first cryptographic hash of said data information is compared with the second cryptographic hash installed on said target. The Heath reference, unlike the Applicant's invention, provides the download, and then, performs what the Examiner considers to be the encryption (see above emphasized portion of Heath). Applicant's invention is not taught, suggested or disclosed by the cited references, namely, Pedrizetti, McGuire and Heath. In accordance with the Heath disclosure, the application is already downloaded before integrity and authenticity take place. The integrity and authentication is therefore done later. In accordance with the Applicant's invention, the first cryptographic hash is compared to determine whether the download to the target should take place. It would appear that Heath actually teaches away from the Applicant's claimed invention, and even the further combination of Heath does not fill the admitted deficiencies, but only shows why the Applicant's invention is still not disclosed or suggested by the cited references.

Applicant's Invention Contains Features Which The Prior Art, Even If Combined as the Examiner Proposes, Are Not Taught, Suggested or Disclosed.

Applicant's present invention provides an apparatus and method for updating files which does not merely replace the file, but may be carried out through editing.

Applicant's specification provides that:

[0014] If the update process begins, the update file will first be downloaded. This file will provide the update information for the update mechanism. In certain preferred embodiments this file may

be compared to the local copy of this file in order to determine what upgrades may be necessary. The *update mechanism will then edit and/or replace files, modules, data and/or byte sequences*, according to the preferred embodiments. In the especially preferred embodiments, the updating occurs through downloading the modules, extracting the modules, and replacing the files or byte sequences. If byte sequences are being replaced, a binary editor will replace those sequences, following directions contained in the modules.

Claim 21 of the Applicant's present invention includes the steps of editing the data on the target in order to update the data on the target. Claim 21 recites this feature, providing the steps of: "comparing said data information with said target in order to determine if said data should be transmitted to said target; transmitting said data, if necessary, to said target; and, editing said data on said target in order to update data on said target." This feature is not disclosed or claimed in the cited references relied on by the Examiner. Applicant's invention facilitates updates, for example, where file replacement (that is, of entire files, may not be feasible, e.g., due to low bandwidth conditions, etc.). The ability to carry out the Applicant's method including to provide editing of a target which may edit binary files, distinguishes Applicant's invention over the cited art. (See, for example, Applicant's Specification, Paragraphs [0056] – [0069], and see Fig. 3.)

Claim 1 of the Applicant's invention has been amended to recite that less than the total file may be transmitted data to the target.

Claim 8 has been amended to more particularly articulate the data transmission step by reciting that wherein said data determined to be transmitted to said target is less

than the content of a file when only portions of a file, and not the entire file itself, require updating.

Claim 20 further articulates the invention by providing the step of editing data on said target in order to update data on said target. Claim 20 depends ultimately from claim 8, and, as can be appreciated, refers to an editing step to edit data on the target. In conjunction with claim 8, as amended, the editing would be something other than replacing a file, where less than the content of the file require updating. This is believed to further distinguish the Applicant's invention over the cited art.

Applicant has presented new claims to more particularly articulate the novel features of the invention. New claim 22 recites the Applicant's method, and provides that the data transmitted to the target comprises an editing command for editing said target. New claim 23 recites the novel feature wherein the data transmitted to the target comprises a binary editing command.

New claim 24 has been added to recite a computer implemented method for transmitting data to a target which includes the step of - - editing said data on said target in order to update data on said target, wherein said transmitted data comprises one or the other or both of (i) portions of a file and (ii) an editing command to effectuate a change in a file.

The amendments to the claims are fully supported by the specification, and no new matter has been introduced. (See Applicant's Specification [0056] through [0069], and see [0014].)

For these reasons, the Applicant's invention is not obvious over the cited references and should be patentable.

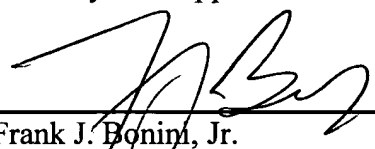
CONCLUSION

Applicant's invention is not taught, suggested or disclosed by the cited references relied on by the Examiner. Accordingly, Applicant's presently claimed invention should be patentable.

If necessary, an appropriate extension of time to respond is respectfully requested.

The Commissioner is authorized to charge any additional fees which may be required to Patent Office Deposit Account No. 05-0208.

Respectfully submitted,
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